

(1880) 05 AHC CK 0004

Allahabad High Court

Case No: None

Chimman Singh

APPELLANT

Vs

Subran Kuar and
Others

RESPONDENT

Date of Decision: May 26, 1880

Citation: (1880) ILR (All) 902

Hon'ble Judges: Robert Stuart, C.J; Oldfield, J

Bench: Division Bench

Judgement

Robert Stuart, C.J. and Oldfield, J.

The widows of Thamman Singh and guardians of his son the plaintiff, and of another son, Sirdar Singh, since deceased, executed on 19th July 1870, three deeds of mortgage of property left by Thamman Singh in favour of the defendants or persons now represented by defendants. The sons of Thamman Singh were minors, and the widows had obtained a certificate under Act XL of 1858 in respect of the minors' estates. The plaintiff has brought this suit on attaining majority to set aside these deeds on the ground of their illegality and to recover possession of property conveyed by two of them. The deeds are (i) mortgage of 10 biswas in Dharanpur, (ii) mortgage of 10 biswas in Beharipur, (iii) mortgage of 35 biswas 4 biswansis of resumed muafi land in Dharanpur; and a ground taken by the plaintiff in the Court below was that the widows had no power to make the mortgages without the sanction of the Civil Court. The defence is that the money was advanced by defendants on the mortgages to satisfy ancestral debts and to save from sale in execution of a decree the ancestral property which had been attached and put up for sale. The Court below has held that the ground urged by the plaintiff was not one on which the deeds could be set aside, and has found this defence to be good in respect of the first and second deeds, but not in respect of the third, and the Court decreed the claim only in respect of the third deed. There are separate appeals preferred by both parties.

2. The plaintiff has again urged in appeal that the deeds are invalid with reference to the provisions of Act XL of 1858, and this plea is good and disposes of both appeals. The deeds of mortgage were executed by persons holding a certificate under Act XL of 1858 without the sanction of the Civil Court previously obtained, and the contracts so made are void with reference to Section 23, Indian Contract Act, since their object is of such a nature that if permitted it would defeat the provisions of Section 18, Act XL of 1858, which enacts that no person taking a certificate under the Act shall have power to sell, mortgage, &c, without the order of the Civil Court previously obtained. The following cases in point may be referred to:--S.A. No. 180 of 1870, decided the 25th March, 1870 (unreported); S.A. No. 1078 in 1878, decided the 17th April 1879 (unreported); Surut Chander Chatterjee v. Ashootosh Chatterjee 24 W.R. 46; Dabee Dutt Shahoo v. Subodra Bibi 25 W.R. 449. The appeal on the part of the plaintiff is decreed with costs, and that on the part of defendants is dismissed with costs.